IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 525 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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RAJUL AVASTHI/MANOJ PANDEY

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 525 of 2001

MR BB NAIK for Petitioner No. 1

MR PR ABICHANDANI, APP, for Respondent No. 1

MR NB TIWARI for Respondent No. 2-4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 05/09/2002

ORAL JUDGEMENT

1. The revisioner, Deputy Director of Income-tax (Investigation), Unit I(i), Income-tax Department, Ahmedabad, challenges the order passed by the learned Additional City Sessions Judge, Court No.11, in Criminal Revision Application No.96 of 2001, on the 19th July, 2001, only to the extent that the said Court gave a direction to complete the inquiry within a period of six months from the date of notice issued to P.I. under Section 132-A of the Income-tax Act, 1961, i.e. 7.3.2001. The rest of the order is not under challenge.

2. Learned Standing Counsel for the Income-tax Department, Mr. Naik, has drawn attention of this Court to provision contained in Section 158BE of the Income-tax Act and, in particular, clause (b) of sub-section (1), which provides that order under section 158BC shall be passed within two years from the end of the month in which the last of the authorisation for search under

section 132 or for requisition under section 132A, as the case may be, was executed in cases where a search is initiated or books of accounts or other documents or any asset are requisitioned on or after the 1st of January, 1997. Mr. Naik submitted that the properties have been requisitioned under Section 132A of the Income-tax Act. He has also drawn attention of this Court to sub-section (5) of Section 132, where also it is categorically provided that, where any money, bullion, jewellery or other valuable article or thing is seized under sub-section (1) or sub-section (1A) as a result of such initiation or requisition made before the 1st day July, 1995, the Income-tax Officer shall within 120 days of seizure, make an order. This he has indicated to emphasis that the proceedings of requisition, in the instant case, are after the prescribed date of 1st July, 1995 and, therefore, that time limit will not be applicable. He submitted that the date of requisition, in the instant case, is 7th March, 2001 and, therefore, it would be governed by clause (b) of sub-section (1) of Section 158BE of the Income-tax Act. By passing the order, it is submitted, the Court below has fixed a time limit which is contrary to the provision of law and, hence, this revision application. It was submitted that the revision, therefore, may be allowed.

3. Learned Additional Public Prosecutor, Mr. Abichandani, appears for respondent No.1-State.

4. Learned Advocate, Mr. N.B. Tiwari, appears for respondents No. 2, 3 and 4. He submitted that the order by the Trial Court is in accordance with law. Respondents No.2, 3 and 4 are adversely affected because of the action of the Income-tax Department. Their valuable vehicles are being damaged as they have remained unattended and, if the time limit is enhanced, as is contended by the revisioner, it would further damage the vehicle. He urged that the revisioner may be directed to conclude the inquiry as early as possible.

5. Having regard to the contentions raised before this Court and having examined the provisions of the Income-tax Act, it is clear that the time limit of six months fixed by the Court below is contrary to the provisions of the Income-tax Act, as contained in clause (b) of sub-section (1) of Section 158BE, which prescribes a time limit of two years from the end of the month in which the last authorisation for search under Section 132 or for requisition under Section 132A, as the case may be, was executed in cases where search is initiated or books of accounts or other documents or any other asset

are requisitioned on or after the 1st day of January, 1997. The statutory right of the revisioner of concluding the inquiry within a period of two years stands curtailed because of the order and such order, therefore, cannot be permitted to stand. The order impugned herein, therefore, stands modified only to the extent that the time limit of six months as ordered by the lower Court and the date indicated for computing the period of six months stand deleted from the order of the Trial Court. The rest of the order is confirmed. It would be appropriate to direct the revisioner to abide by the provision of the Income-tax Act, particularly Section 158BE(1)(b), so far as time limit is concerned.

6. There is substance in contention raised by Mr. Tiwari and it is hoped that the revisioner-authorities will conclude the inquiry as expeditiously as possible, without waiting for the statutory period of two years to lapse.

7. Rule is made absolute accordingly.

8. Direct service to the Trial Court is permitted.

[A.L. DAVE, J.]

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